

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,
4 Plaintiff,

5 vs. CR-12-1393 MCA
6 ALTAR DARNELL WELLAMS,
7 Defendant.

8
9 Transcript of Motion to Suppress Evidence
10 before THE HONORABLE M. CHRISTINA ARMIJO, Chief United
11 States District Judge, held in Albuquerque, Bernalillo
12 County, New Mexico, commencing on Wednesday, October 3,
13 2012, at 2:14 p.m.

14 Proceedings recorded by mechanical
15 stenography; transcript produced by computer-aided
16 transcription.

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8 I N D E X

9 PAGE

10 WITNESSES FOR THE PLAINTIFF:

11 JARRELL PERRY

12 Direct Examination by Mr. Braun	6
13 Cross-Examination by Mr. Knoblauch	32
14 Redirect Examination by Mr. Braun	48
15 Recross Examination by Mr. Knoblauch	50
16 Examination by the Court	50
17 ARGUMENT BY MR. KNOBLAUCH	53
18 ARGUMENT BY MR. BRAUN	56

19 EXHIBITS ADMITTED

20 PAGE

21 Exhibit 1	5
22 Exhibit 1-A	5
23 Exhibit 2	5

24
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1 Motion to Suppress Evidence

2 (Court in session at 2:14 p.m.)

3 THE COURT: All right. Do we have that working?

4 MR. BRAUN: We do.

5 THE COURT: All right. Let us proceed, then.

6 Let me at this time call the case of United States v. Altar
7 Darnell Wellams, W-E-L-L-A-M-S. This is on the Court's
8 Criminal Docket, 12-CR-1393.

9 May I have appearances, please?

10 MR. BRAUN: James Braun on behalf of the United
11 States. And with me is Raquel Ruiz-Velez, who is a Special
12 Assistant U.S. Attorney, although she's not appearing in
13 this case.

14 THE COURT: Good afternoon.

15 MS. RUIZ-VELEZ: Good afternoon.

16 MR. KNOBLAUCH: Charlie Knoblauch. I'm here on
17 behalf of Mr. Wellams, who is present before the Court,
18 Your Honor.

19 THE COURT: Good afternoon, counsel. All right.
20 Just give me a moment here. All right.

21 The matter before the Court this afternoon is the
22 defendant's motion to suppress certain evidence in this
23 case. I certainly can provide counsel with a brief
24 opportunity for an opening statement, but I find that if
25 there's going to be evidence presented here, that we

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1 probably should proceed directly to the evidence.

2 How do you wish to proceed?

3 MR. BRAUN: We would be happy to do that, Your
4 Honor.

5 MR. KNOBLAUCH: Sounds reasonable, Judge.

6 THE COURT: All right. Mr. Knoblauch, this is
7 your motion. You may proceed. How do you want to handle
8 this? Because are you calling -- is the agent going to be
9 called initially?

10 MR. BRAUN: We would call the agent, Your Honor.

11 MR. KNOBLAUCH: We're stipulating to the
12 admission of one CD recording and also the transcript of
13 that recording.

14 THE COURT: Do you have copies there?

15 MR. BRAUN: Yes, Your Honor.

16 THE COURT: All right.

17 MR. BRAUN: We also have a photograph marked as
18 Exhibit 2. It's a transcript, and the photograph, and a
19 copy of the CD.

20 THE COURT: All right. So there are three
21 stipulations? These are to be considered evidence here:
22 Exhibit Number 1, which is the CD recording; Exhibit Number
23 1-A, the transcript of that recording, the written
24 transcript; and Exhibit 2, which is a photograph of the
25 bundle?

1 MR. KNOBLAUCH: That is correct, Your Honor.

2 THE COURT: All right. They are admitted.

3 (Exhibits 1, 1-A, and 2 admitted into evidence.)

4 THE COURT: Now, how are you going to proceed?

5 Or how do you wish to proceed?

6 MR. KNOBLAUCH: I think probably the best way to
7 proceed, for all involved, would be -- we'd be willing to
8 waive any sort of opening at this point, and I believe the
9 government is going to do that, also, and just have Agent
10 Perry called to the stand.

11 THE COURT: That's fine.

12 MR. KNOBLAUCH: For his testimony.

13 THE COURT: That's fine.

14 MR. BRAUN: I would be happy to put him on first.

15 THE COURT: Okay.

16 MR. BRAUN: If it please the Court.

17 THE COURT: That's fine.

18 MR. BRAUN: The United States calls Special Agent
19 Jay Perry.

20 COURTROOM DEPUTY CAROL BEVEL: Please raise your
21 right hand.

22 You do solemnly swear that your testimony in this
23 matter shall be the truth, the whole truth, and nothing but
24 the truth, so help you God?

25 THE WITNESS: Yes, ma'am, I do.

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1 COURTROOM DEPUTY CAROL BEVEL: Please be seated.
2 Please state your name and spell your last name for the
3 record.

4 MR. KNOBLAUCH: Your Honor, I might invoke the
5 rule. I don't think it's necessary, but just as a formal
6 action.

7 THE COURT: If there is anyone present in the
8 courtroom who is intended to be a witness in this case for
9 either the government or the defendant, I would ask that
10 they remain outside the courtroom until such time as he or
11 she is called to testify. Otherwise, this is a public
12 hearing.

13 And let us proceed.

14 MR. BRAUN: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. BRAUN: Please state your name.

17 THE WITNESS: My name is Jarrell Perry,
18 P-E-R-R-Y.

19 JARRELL PERRY,
20 after having been first duly sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRAUN:

24 Q. How are you employed?

25 A. I'm a special agent with the Drug Enforcement

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1 Administration.

2 Q. How long have you been a special agent with DEA?

3 A. September 14 of this year was my 14th year.

4 Q. And prior to that, did you have any law enforcement
5 experience?

6 A. Yes, sir, I did.

7 Q. What was that?

8 A. I was a police officer for the City of Knoxville,
9 Tennessee, for approximately six and a half years prior to
10 being hired by DEA.

11 Q. So you have over 20 years total, then, of law
12 enforcement experience?

13 A. Yes, sir.

14 Q. And what training have you had to be first a police
15 officer, and then a DEA special agent?

16 A. Prior -- after being hired by Knoxville City Police
17 Department, I went through a 22-week police academy that
18 was put on by the City of Knoxville. And then prior to
19 coming to Albuquerque, after being hired by DEA, I went
20 through a 17-week DEA academy in Quantico, Virginia.

21 Q. Okay. And where are you assigned with the DEA?

22 A. Here in Albuquerque.

23 Q. And are you assigned to a particular group?

24 A. Yes, sir. I'm assigned to Group One. Basically, I'm
25 assigned to a subgroup of Group One, which we term as an

1 interdiction group.

2 Q. Okay. And can you describe for the Court what
3 interdiction work is?

4 A. Basically, we work at various means of public
5 transportation here in Albuquerque; sometimes we vary
6 outside of Albuquerque. But we work at the Amtrak train
7 station; Greyhound bus station; various other bus stations;
8 sometimes at packaging services such as UPS and FedEx; and
9 occasionally at the Albuquerque International Airport.

10 We attempt to interdict or intercept drug and/or
11 money couriers that are either transporting or carrying
12 illegal narcotic or proceeds from illegal narcotics
13 throughout the country.

14 Q. And have you had any specific training in how to do
15 this type of interdiction work?

16 A. Yes, sir, I have. When I first was assigned to the
17 interdiction unit approximately 13 years ago, I attended, I
18 think for six, maybe seven years, what is termed a Sky Narc
19 Conference; basically, a conference that pertains
20 specifically to interdiction, how to work various bus
21 companies, packaging services, trains. And it specifically
22 is how to do consensual encounters, the current laws,
23 packaging methods, transportation methods of illegal
24 narcotics and proceeds from illegal narcotics.

25 Q. Okay. Have you received any awards for your work in

1 interdiction cases?

2 A. Yes. Back in 2006, I was given an award by the Sky
3 Narc Conference, which is basically the International
4 Narcotics Interdiction Association puts on a conference,
5 and they have an agent or officer of the year every year.
6 And in 2006, I was awarded with that award.

7 Q. Can you approximate how many seizures of both illegal
8 narcotics and U.S. currency you have made as a member of
9 DEA over the last 13 years or so?

10 A. I don't know the exact amount, but I know it has been
11 over 1,000 cases.

12 THE COURT: 1,000 cases? Or 1,000 seizures?

13 THE WITNESS: Well, it's basically the same
14 thing. When we have a case, that has to have some type of
15 either seizure of illegal narcotics or currency.

16 THE COURT: Okay.

17 Q. (By Mr. Braun) And these are cases where you were
18 either the case agent or you were assisting another agent?

19 A. Yes. I was either the case agent, which the majority
20 of them, I was; or I was the co-case agent.

21 Q. And how many of those seizures involved contraband
22 strapped to a person's body?

23 A. I don't know the exact amount, but it has been in the
24 hundreds.

25 Q. Okay. Now, on a given day, how do you select where

1 you're going to do your interdiction work?

2 A. Well, we work, as I stated earlier, various means of
3 public transportation, but specifically the duties I'm
4 working currently, and have for the last year and a half,
5 two years, is specifically the Amtrak train and the
6 Greyhound bus station.

7 I know the schedules for those buses and trains.
8 And depending on vacation or court or meetings or whatever
9 is going on, I'm at the bus station or the train station on
10 a daily basis.

11 Q. And in Albuquerque, where are the Amtrak station and
12 the Greyhound station in relation to each other?

13 A. The actual station is in the same location. It's 320
14 First Street. But they're in the same building. The
15 ticket counters are actually right across from one another.
16 And the train and the buses stop probably within 50 yards
17 of each other.

18 Q. Okay. So if you could describe the layout of the
19 Greyhound portion of the building for the Court?

20 A. The building has a half of a circle in the front. That
21 is for, basically, passenger drop-off and pick-up. Once
22 you walk inside of the building, as stated earlier, the
23 Amtrak and Greyhound is together. To the right side is the
24 Greyhound ticket counter; to the left side is the Amtrak
25 ticket counter.

1 As you walk into the station, the station opens
2 up. It has a large seating area in the middle. It has
3 men's and women's bathrooms. To the left side is the food
4 court. It has a grill. If you turn right inside the
5 station, that is what they consider the passenger boarding
6 area for the Greyhound buses. They have, I believe, five
7 different doors and a seating area there. On the doorways,
8 it has the names of the cities of where you're traveling to
9 so you'll know which door to go to.

10 Once you go outside of those boarding doors, they
11 have a breezeway and a walkway. And then they have, I want
12 to estimate between eight to ten parking spots for buses.
13 They're at an angle in the parking lot. That's where the
14 buses pull in when they arrive, and also when they load up
15 the passengers.

16 If you go farther south in the parking lot, there
17 is a, what we consider -- what Greyhound considers as a
18 wash bay where the bus is washed, where it's serviced while
19 during its stay here in Albuquerque.

20 Q. And if you -- when you are doing your interdiction work
21 at the Greyhound station, what exactly do you do?

22 A. Generally, if it's a normal day, I like to be there
23 when the bus arrives, to watch the passengers -- to watch
24 the bus arrive and watch the passengers deboard the bus.
25 When I say "deboard," every passenger has to get off the

1 bus here in Albuquerque because the bus is serviced here,
2 so every passenger gets off. I like to watch the
3 passengers get off, to see who's carrying luggage, what
4 order they get off in, and just to watch what the
5 passengers do.

6 Then the bus is driven back to that wash bay that
7 I referred to earlier and is serviced. It's fueled, it's
8 washed, it's cleaned. When that happens, generally I walk
9 down to that wash bay, and I board the bus and I look at
10 the luggage that is what I refer to as on top of the bus,
11 the seating area where the passengers are. You can take
12 your luggage off the top of the bus, the luggage you
13 carried on, or you can leave it on the bus, whichever you
14 choose to do.

15 So I like to look at that luggage, and also I
16 might look at -- sometimes I look at the luggage that's
17 underneath the bus, prior to the passengers reboarding.

18 Once the bus is serviced, then the driver does
19 his checks of the bus. They make an announcement. When
20 you deboard the bus, they give you what's called a boarding
21 pass. It has a three-digit number on it, and they'll call
22 out that number. It's either like 363 or 7 -- whatever the
23 number is. And they make that announcement over the
24 intercom. And when they make that announcement, I
25 generally board the bus, and as the passengers are

1 reboarding, I conduct consensual encounters with the
2 passengers as they are reboarding the bus. That's my
3 normal practice.

4 Q. Okay. You mentioned conducting consensual encounters.
5 What is a consensual encounter?

6 A. A consensual encounter is basically a voluntary
7 conversation between law enforcement, a member of law
8 enforcement and a private citizen. That is basically a
9 voluntary conversation.

10 Q. And can you describe how you generally engage in a
11 consensual encounter?

12 A. Yes, sir. When I approach a person that I wish to
13 speak with, on the bus or outside or wherever, on the train
14 station, I display my badge to them, which I carry in my
15 left rear pocket. I identify myself as a police officer.
16 After doing that, I return my badge to my left rear pocket,
17 is where I keep it.

18 I ask permission to speak with them. If they
19 grant me permission to speak with them, then I ask them
20 various questions about their travel, and then I ask them
21 questions concerning luggage, if they have luggage with
22 them. I ask them where they live. I may ask them for
23 their bus ticket or train ticket, or their identification.
24 And then I subsequently ask them if they have luggage with
25 them.

1 If they identify luggage, I ask consent to search
2 the luggage for contraband. And then after doing that, I
3 search passengers' persons, or their bodies, also for
4 contraband, if they give permission. And then once doing
5 that, I go on to the next passenger or the next person I
6 wish to speak with.

7 THE COURT: Mr. Braun, let me interrupt you for
8 just a minute. Let me confer with my staff for just a
9 minute.

10 (A discussion was held off the record.)

11 THE COURT: All right. Let us continue here.

12 Q. (By Mr. Braun) And when you conduct these consensual
13 encounters, do you generally try to record those
14 encounters?

15 A. Yes, sir.

16 Q. With what type of device do you record the encounters?

17 A. It's a digital recorder that I carry around my -- it's
18 around my neck with a -- attached to a lanyard. It's
19 underneath of my shirt.

20 Q. Directing your attention to May 24, 2012, were you
21 working interdiction on that day?

22 A. Yes, sir, I was.

23 Q. And what did you do when you came on duty that morning?

24 A. I don't remember exactly the first thing I did, but I
25 probably went to the office and did paperwork. And then

1 the first place that I went to for interdiction-wise, I
2 went to the Amtrak train station and spoke with various
3 passengers on the Amtrak train. Then I went over to the
4 Greyhound bus.

5 Q. Okay. And what did you do when you got to the
6 Greyhound bus?

7 A. The passengers had already started reboarding the bus.
8 The majority of the passengers were actually already on the
9 bus. So I boarded the bus and walked to the rear and began
10 conducting consensual encounters with the passengers.

11 Q. Okay. And about what time was this?

12 A. I don't know the exact time. The bus is scheduled to
13 depart at 11:10 a.m. I would estimate it was around five
14 minutes to 11:00, maybe 11:00 a.m.

15 Q. So you would not have been able to see the passengers
16 deboard and then do the routine you normally follow, that
17 you talked about?

18 A. No, sir. I did not on that date.

19 Q. And were you working with another agent on that day?

20 A. Not on this day, I was not.

21 Q. So when you went onto the bus, you were by yourself?

22 A. That's correct.

23 Q. And what did you do then, when you boarded the bus?

24 A. I walked to the rear, which is my practice. I like to
25 start at the rear of the bus and speak with passengers,

1 which I did. I went to the rear of the bus and conducted
2 consensual encounters and then moved forward with the
3 various passengers.

4 Q. What were you wearing that day? Do you recall?

5 A. I don't recall exactly what I was wearing. It was in
6 May. Most days I wear, when it's warmer, I wear shorts and
7 generally an untucked, like a polo shirt, short-sleeved
8 shirt. Sometimes I wear jeans. But we don't have
9 uniforms, so that's basically -- I know I was wearing
10 either one of those two types of clothing.

11 Q. So you weren't wearing any jacket or anything with a
12 DEA insignia on it?

13 A. No, sir.

14 Q. Were you armed?

15 A. Yes, I was.

16 Q. Where was your firearm?

17 A. On my right side. It was concealed underneath of my
18 shirt that I was wearing. That was untucked.

19 Q. So it was not visible?

20 A. It was not visible.

21 Q. And where was your badge?

22 A. It was in my left rear pocket, which is where I keep it
23 all the time.

24 Q. And as you were performing these consensual encounters,
25 if you could tell the Court what you were doing?

1 A. I'm sorry? I couldn't hear you.

2 Q. If you could tell the Court what you were doing as you
3 went down the bus, performing the consensual encounters?

4 A. I started at the rear. I removed my DEA badge from my
5 left rear pocket, with each passenger. If they were
6 traveling together, two people traveling together, I spoke
7 with them and displayed my badge to them; identified myself
8 as a police officer; asked for permission to speak with
9 them.

10 I asked various questions about travel: Where
11 are you traveling to? Where are you traveling from? Where
12 they lived, and if they had luggage with them, and the
13 location.

14 I spoke with numerous passengers that were at the
15 rear of the bus and then began to move forward.

16 Q. Okay. Now, were you able to record your encounters on
17 this day?

18 A. Yes, I was.

19 MR. BRAUN: If I might have just a moment, Your
20 Honor?

21 THE COURT: Certainly.

22 MR. BRAUN: My computer turned itself off.

23 THE COURT: They're known to do that.

24 MR. BRAUN: May I approach the witness?

25 THE COURT: You may, counsel.

1 Q. (By Mr. Braun) I'm going to hand you what has been
2 marked and already admitted as Government's Exhibit 1 and
3 Government's Exhibit 1-A. Starting with Exhibit 1, do you
4 recognize that?

5 A. Yes, I do.

6 Q. What is that?

7 A. It's a CD that I believe is a recording of the
8 consensual encounter that -- encounters that I conducted on
9 the bus on May 24.

10 Q. Have you listened to that recording?

11 A. Yes, I have.

12 Q. Does it accurately depict what happened on that morning
13 at the Greyhound bus?

14 A. Yes, it does.

15 Q. And have you read the transcript marked as Exhibit 1-A?

16 A. Yes, sir, I have.

17 Q. Does it accurately depict the contents of Exhibit 1?

18 A. Yes, sir, it does.

19 MR. BRAUN: Your Honor, may I play a portion of
20 Exhibit 1?

21 THE COURT: You may.

22 MR. BRAUN: Just so the Court is aware, there is
23 one consensual encounter on the recording that is not on
24 the transcript, and so you'll hear a portion before we get
25 to what is at the top of Page 3 on the transcript.

1 THE COURT: Okay.

2 (CD recording played.)

3 Q. And if I could stop right there for just a moment. You
4 heard in the background someone say, "If I could just have
5 everybody stay in your seats, please." Who was that
6 speaking?

7 A. That's the bus driver.

8 Q. So that was not you?

9 A. No, that was not me.

10 Q. And as you were performing the consensual encounters,
11 were the passengers all seated?

12 A. No. They were still boarding the bus, and some of
13 them were putting their luggage up and standing in the
14 aisleway.

15 Q. So were some seated and some standing?

16 A. Yes.

17 Q. Okay. And were people who wanted to get on or off the
18 bus able to get around you?

19 A. Yes.

20 (CD recording played.)

21 Q. I'm going to go ahead and stop right there. Could you
22 describe in a little more detail for the Court a little
23 more about the consensual encounters that we just heard on
24 the audio?

25 A. That last encounter was a passenger who was seated

1 on the right-hand side of the bus. He was seated
2 approximately five to six seats from the rear of the bus,
3 in the window seat. And as you heard on the recording, I
4 identified myself as a police officer, asked for permission
5 to speak with him, which he gave me permission. I asked
6 him about luggage, and where he was traveling to, and
7 details.

8 He was traveling to Memphis, coming from
9 Phoenix. He said he lived in Memphis, and he stated that
10 he had no luggage with him. I subsequently asked him if he
11 had his ticket with him, which he gave me. I reviewed his
12 ticket and returned it to him. I observed he had a pillow
13 in the seat with him, a small pillow. I asked him if he
14 would give me permission to search the pillow for
15 contraband, which he did. He handed it to me. I searched
16 it with negative results and immediately returned it to
17 him.

18 Then I asked him for consent to search his person
19 for contraband, which he did give permission. I conducted
20 a search of his person, with negative results for
21 contraband.

22 Q. So at point, what did you do?

23 A. I walked a couple of steps forward and spoke with the
24 defendant in this case.

25 Q. Okay. And do you see the defendant in the courtroom

1 today?

2 A. Yes, sir, I do.

3 Q. Can you describe him, please?

4 A. He is seated at defense counsel table beside Mr.
5 Knoblauch. He's wearing a red-colored jumper, a white
6 T-shirt underneath. He has a goatee and a shaved head.

7 Q. Okay. Now, where was the defendant seated in relation
8 to this gentleman that you just had the consensual
9 encounter with?

10 A. He was one seat forward and across the aisleway.

11 Q. So approximately how many feet away?

12 A. I would estimate maybe five to six feet away.

13 Q. So you approached the defendant, you said?

14 A. Yes, sir, I did.

15 Q. What happened?

16 A. I displayed my -- I removed my badge from my left rear
17 pocket; displayed it to him; identified myself as a police
18 officer. Well, the first thing I said was, "Hello, sir.
19 How you doing today?" Then I displayed my badge and
20 identified myself as a police officer. I asked for
21 permission to speak with him. He moved his head in an
22 up-and-down position, and he said, "Yeah." And then I
23 asked him various questions.

24 Q. What happened then?

25 A. The questions I asked him, I asked him where he was

1 traveling to. He said that he was going to Memphis. I
2 asked him where he was traveling from. He stated Arizona.
3 I asked him if he lived in Memphis or Arizona. He stated
4 "neither," he was just visiting. So then I asked him where
5 he lived. He stated he lived in Michigan.

6 At that time, I asked him for his bus ticket. He
7 handed me his ticket. I looked at it and returned it to
8 him. I asked him if he had any luggage with him. He said,
9 "No, I do not."

10 I had confirmed and asked him if he had any
11 luggage above or below the bus, and he said, "No."

12 Q. Based upon your training and experience, was that
13 suspicious to you, the fact that he did not have any
14 luggage with him?

15 A. Yes, it was suspicious to me.

16 Q. So you asked for his ticket. What happened?

17 A. After I reviewed it, I returned it to him then, after I
18 asked about the luggage. And then I asked him if he had
19 anything on his person. No, I take that back. The next
20 thing I did, I observed a pillow he had sitting in the seat
21 behind him. It was a small pillow. Basically, it was the
22 exact same size and actually the same color as the pillow
23 of the individual that I had just spoken with.

24 I asked him if the pillow belonged to him. He
25 said, "Yes." I asked him if he would give me permission

1 to search that pillow for contraband. He said, "No
2 problem." He handed me the pillow. I searched it, with
3 negative results, for contraband, returned it to the
4 defendant.

5 At that time, I asked him if he had anything, any
6 weapons or anything strapped to his person. His statement
7 was, "My person?" I took that as meaning he was asking a
8 question, what "my person" means, so I explained to him
9 that his person basically was on his body.

10 And he said -- well, he said, "No." And then I
11 asked him for permission to search his person for
12 contraband. And he said, "You want to search my person?
13 I don't have a problem." So -- but then he didn't
14 understand.

15 So I subsequently asked him -- I explained to him
16 that -- he asked me if it was necessary. I explained to
17 him that I was asking for permission to search his person.
18 He basically said he didn't understand; that it was his
19 first time on the bus; he really didn't know what was going
20 on.

21 Q. Okay.

22 A. So I explained to him basically why I wanted to search
23 his person and why we're there; basically, that sometimes
24 we have passengers, due to the lack of security, that do
25 have things strapped to their body, specifically illegal

1 narcotics, weapons, and that we do conduct searches of
2 people's persons on the bus and I tried to speak with every
3 passenger.

4 Q. Okay. Let me go ahead, then, and play the recording up
5 to that point.

6 A. Okay.

7 (CD recording played.)

8 Q. I'm going to stop right there. When he asked, "Do we
9 need to leave out of here?" was it your impression that he
10 was actually asking to leave?

11 A. No, I don't think he was asking to leave. He was
12 asking -- in my opinion, he was asking, "Do we need to
13 leave out of here to conduct the search?" And I told him,
14 "No, we don't need to leave. You can go wherever -- you
15 know, if you want to leave, it's up to you. You don't have
16 to go anywhere."

17 Q. So at any time during your encounter did he try to
18 leave?

19 A. No, he did not.

20 Q. Did you prevent him from getting up and leaving?

21 A. No, I did not.

22 Q. Okay. And when you said, "Can you lift up your shirt
23 for me and show me what's underneath your shirt?" were you
24 asking for permission from him to do that, or were you
25 demanding that he do that?

1 A. I asked him permission to lift up his shirt.

2 Q. Could you describe what he was wearing?

3 A. He was wearing a short-sleeved button-up shirt. It was
4 buttoned all the way from -- kind of like a short-sleeved
5 dress shirt. It was kind of baggy. It was long. It was
6 untucked. He was wearing tan-colored shorts. The shirt
7 was untucked, and as he was sitting down it covered the
8 whole top portion of his leg area, down below his knees.

9 Q. So when you asked if he would lift up his shirt, what
10 was his response?

11 A. He immediately lifted up the bottom of his shirt.

12 Q. And what did you observe?

13 A. As soon as he did that, immediately I observed a
14 square-shaped bundle that was in his crotch area underneath
15 of his shorts. It was protruding from his shorts.

16 Q. And when you say "protruding," you did not see the
17 package, itself, did you?

18 A. No, but it was obvious. It was -- I mean, it was
19 underneath his shorts. It was obviously lying there, is
20 the first thing I noticed.

21 Q. You could see the outline of the package?

22 A. Yes, sir.

23 Q. Based upon your training and years of experience and
24 other seizures that you've made, did you have an opinion as
25 to what this was?

1 A. Yes, I did.

2 Q. And what was that opinion?

3 A. I believe from, as you stated, my experience, it was a
4 package of contraband; specifically, a package of illegal
5 narcotics.

6 Q. Okay. So at that point, what did you do?

7 A. I asked the defendant what was in his crotch. His
8 answer was, "That's me." I informed him that, "I know
9 that's not you. I can see a bundle. Is it a weapon?"
10 He said, "No." I asked him if it was a bundle. And he
11 moved his head in an up-and-down position. When he did
12 that, I asked him if that nod meant "Yes," and he stated,
13 "Yes."

14 And then I asked him if the bundle was something
15 illegal, and he didn't give a verbal response. He tilted
16 his head slightly to the left. He raised his eyebrows, and
17 he gave what I would term as a closed-mouth smirk.

18 Q. What was your impression of his response?

19 A. My impression of his nonverbal response was like,
20 basically: It is what it is. It's there.

21 I mean, I didn't take it as a "Yes" or a "No"
22 but -- I mean, it was basically a response that: It's
23 there, and you see it.

24 Q. And at that point, what did you do?

25 A. I asked the defendant to place his hands up on the back

1 of the seat in front of him, which he did. I felt the
2 bundle. It was a hard, like a square-shaped bundle, the
3 same thing I had just seen. And then I felt it, and I
4 knew, from my training and experience, that it was
5 definitely a package or a bundle of illegal narcotics.

6 And the defendant was -- I informed him to stand
7 up, which he did, and then I placed handcuffs on him.

8 Q. Okay. I'm going to go ahead and play the rest of the
9 recording.

10 (CD recording played.)

11 Q. And is that the end of the recording?

12 A. Yes, sir.

13 Q. So after you placed the defendant under arrest then and
14 handcuffed him, what did you do?

15 A. I grabbed the pillow. That was the only thing that he
16 said he had as property. And I began to walk him off the
17 bus, and there were passengers that were standing in the
18 aisleway and maybe still reboarding the bus. The aisleway
19 was blocked, so we stopped for a few minutes until I could
20 get the aisleway cleared, and then walked the defendant off
21 the bus.

22 Q. Okay. Where did you take him?

23 A. Into a private room inside of the Greyhound bus
24 station.

25 Q. What happened there?

1 A. I unzipped his pants. I wanted to see the bundle,
2 see the packaging. When I did that, the bundle was not
3 there.

4 Q. Did that surprise you?

5 A. Yes. It was surprising to me, yes.

6 Q. So what did you do?

7 A. I walked the defendant back out of that private room,
8 back onto the bus, to attempt to locate the bundle that I
9 had just seen and felt on the bus.

10 Q. What did you do on the bus?

11 A. I went back to where the defendant was originally
12 seated. I had him a few seats forward of that seat. I
13 went down and looked underneath the seat and was looking
14 for the bundle. And an employee who was on the bus got my
15 attention at that time.

16 Q. Okay. And what did the employee say to you?

17 A. Well, he called my name. He was standing a few feet in
18 front of me, and he was holding a square-shaped gray
19 duct-taped bundle in his hands. And I took possession of
20 the bundle.

21 Q. Okay. Did the defendant say anything around that time?

22 A. Not at that time. He did as I was walking him off the
23 bus.

24 Q. Okay. What did he say?

25 A. He stated that, "I didn't purposely remove that from --

1 remove that. As we were walking off the bus, it fell off
2 of me, onto the floor."

3 Q. And when he said that, what was your impression of what
4 he was referring to?

5 A. The bundle that we had just -- that I had in my hands,
6 that I had just found on the bus.

7 Q. And when you took him off the bus, was that pretty much
8 immediately after the employee gave you the package? Or
9 did you do anything else on the bus?

10 A. No, it was immediately, we walked right off the bus.

11 Q. Okay. And the defendant's statement, was that in
12 response to any questioning by you?

13 A. No, I didn't question him. It was still while he was
14 on the bus, we walked down the aisleway.

15 Q. So just as you were walking, he stated that?

16 A. Yes.

17 Q. Where did you take him at that point?

18 A. To my car, and I transported him back to the DEA
19 office.

20 Q. What happened at the DEA office?

21 A. He was placed into a holding cell. Prior to being
22 placed in a temporary holding cell, he was strip-searched,
23 and he had a -- when I did that, he had a piece of gray
24 duct tape around his waist, that went down to the front of
25 his crotch area, that was attached to his shirt or his

1 body.

2 Q. Okay.

3 MR. BRAUN: May I approach the witness?

4 THE COURT: You may, counsel.

5 Q. I'm going to hand you what's been admitted and marked
6 as Exhibit 2. Do you recognize that?

7 A. Yes, I do.

8 Q. What is that?

9 A. That's the bundle that was removed from the defendant
10 on May 24. It's a photograph that was taken by me at the
11 DEA office.

12 Q. And is that photograph a fair depiction of the bundle
13 you seized that day?

14 A. Yes.

15 Q. And what was inside of the bundle?

16 A. There was a smaller bundle on top. The main portion,
17 the larger part, contained a whiteish-colored powdered
18 substance; and then the top part contained a hard, like a
19 brownish-colored rock-like type substance.

20 Q. Have you received lab results for those two different
21 substances?

22 A. Yes.

23 Q. What were the results?

24 A. The larger bundle came back testing positive for the
25 presence of cocaine, and the smaller bundle tested positive

1 for cocaine base.

2 Q. And the duct tape that you say you found wrapped around
3 his waist, was it similar to the duct tape that was wrapped
4 around these packages?

5 A. Yes. It was gray duct tape.

6 Q. After you strip-searched the defendant and found that
7 duct tape on his person, what did you do?

8 A. Well, we processed the drug exhibits; and then the
9 defendant was processed; and then subsequently I read him
10 his Miranda rights in the presence of another agent at the
11 DEA office.

12 Q. And when you read a defendant their Miranda rights, do
13 you use a form?

14 A. Yes. We use a form, DEA form 13-A, which is basically
15 an Advice of Miranda Rights card.

16 Q. What was the defendant's response after being advised
17 of his Miranda rights?

18 A. I advised him of his rights and asked him if he was
19 going to answer questions. He said he would be willing to
20 answer questions but not without someone present to look
21 out for his interests.

22 Q. And how did you interpret that statement?

23 A. That basically he was asking for an attorney.

24 Q. So did you question him at that point?

25 A. No, I did not. No questions were asked of him.

1 Q. But did he make any statements?

2 A. Yes, he did. He made a few statements.

3 Q. What did he say?

4 A. He stated, "I put my hand in the" -- and he used a
5 curse word -- "in the cookie jar, and it's still in there."
6 And he also said, "I did what I did, and I have to make
7 money." He stated, "I shove money in people's faces, and I
8 get what I want."

9 Q. And were those statements in response to any
10 questioning at all on your part?

11 A. No.

12 MR. BRAUN: I pass the witness, Your Honor.

13 THE COURT: You may cross-examine, counsel.

14 MR. KNOBLAUCH: Thank you.

15 CROSS-EXAMINATION

16 BY MR. KNOBLAUCH:

17 Q. Good afternoon, Agent Perry.

18 A. Good afternoon.

19 Q. As part of your job, you go to the various -- all of
20 the transportation places around town; is that right?

21 A. Sir, I'm having a little bit of difficulty hearing you.

22 Q. As part of your job, you go to various public
23 transportation places around town; is that right?

24 A. Yes.

25 Q. You said the airport?

1 A. Occasionally. That's very rare.

2 Q. But primarily the Amtrak; is that correct?

3 A. Yes, sir.

4 Q. And the bus station?

5 A. Yes, sir.

6 Q. And the Amtrak, that's a government agency, is it not?

7 A. To my knowledge, I'm not sure if it's a government
8 agency or not. I have no idea.

9 Q. Okay. But the Greyhound is a private agency or private
10 company; is that correct?

11 A. I believe it is.

12 Q. And did you receive permission from the Greyhound
13 company to gain access to their facilities?

14 MR. BRAUN: Objection; relevance.

15 THE COURT: Counsel, I don't think it's relevant.

16 MR. KNOBLAUCH: Your Honor, if this agent is
17 trespassing into the private property, without permission,
18 and anybody who was in that private property with
19 permission, with a ticket, you know, would have a superior
20 right to privacy than -- well, not complete privacy, but
21 possibly including somewhat limited privacy in that area.

22 THE COURT: Mr. Braun?

23 MR. BRAUN: Your Honor, the defendant had not
24 raised a trespass argument in his motion, even though he
25 was aware of the facts of this case from the reports. So I

1 would argue that that argument is waived. And there's no
2 evidence that the agent was trespassing, in any event.

3 THE COURT: I'm going to permit the question, the
4 answer, if the witness can answer it, but I won't permit
5 him to speculate or guess. If he doesn't know something,
6 he doesn't know something, and we'll move on.

7 MR. KNOBLAUCH: Okay.

8 A. Can you repeat your question, please?

9 Q. Did you have permission from the Greyhound company to
10 gain access to the interior of their facilities?

11 A. Yes, I did.

12 Q. And from whom at the facility?

13 MR. BRAUN: Objection; relevance.

14 THE COURT: How is that relevant here, counsel?

15 MR. KNOBLAUCH: Well, Your Honor, like I said, if
16 he had permission, then he would know exactly who he has
17 permission from. And I have indications from the Greyhound
18 company nationally that they do not give anyone permission,
19 law enforcement, anyone permission to gain access. And if
20 some local agent is doing so, I think it would be
21 interesting to know.

22 THE COURT: Mr. Braun?

23 MR. BRAUN: This should not be a discovery
24 expedition to find out who, if anyone, gave Agent Perry
25 permission to be there. Just because the defense might be

1 interested to know who it is, that's not relevant. The
2 fact is, the agent testified he did have permission to be
3 there. It doesn't matter by whom.

4 THE COURT: What do you have to proffer that this
5 agent did not have permission to be there that day?

6 MR. KNOBLAUCH: He has to have permission from
7 some agent of the company, have permission to be there,
8 and I would like him -- I'd like to know who gave him
9 permission.

10 THE COURT: If he can answer the question, he can
11 answer it, but I won't permit him to guess or speculation.

12 MR. KNOBLAUCH: Okay.

13 A. I was initially given permission, when I started
14 working the Greyhound bus, by the old manager, which was
15 Jason Reeves, who is no longer here. He is now in Memphis,
16 Tennessee. His boss, who sits in Dallas, Texas, is Shannon
17 Kilpatrick, who is the regional manager, who I've met with
18 or numerous occasions and talked to and e-mailed on several
19 occasions, who has also given me permission to be at the
20 Greyhound bus station, and actually has made the statement
21 that she likes us to be at the Greyhound bus station.

22 Q. Okay. Thank you. And does that include access to the
23 buses, themselves?

24 A. I've been given permission to board buses; look at
25 luggage; be inside of the Greyhound bus station; use their

1 private rooms; use all of their facilities.

2 Q. Okay. And, again, this is by a Jason Reeves, who is
3 the ex-manager; is that right?

4 A. That was the initial person, yes.

5 Q. The current manager is Buddy Dean; is that correct?

6 A. To my knowledge -- I haven't worked in two weeks --
7 there is no -- there is not a manager at this time, a
8 permanent manager. They're in transition and in the
9 process of hiring a new manager.

10 Q. Okay. You said you served on the 24th of May of this
11 year. You started work sometime in the morning; is that
12 correct?

13 A. Yes.

14 Q. Okay. You went to your office to do paperwork?

15 A. That's my normal practice. I would assume that's what
16 I did on that date.

17 Q. Okay. So you can't actually testify that on this date
18 you did that, though?

19 A. No, I can't.

20 Q. But you do recall going to Amtrak first?

21 A. Yes, I do.

22 Q. And what time did you go to the Amtrak?

23 A. Depending on what time the train comes in on this
24 date -- obviously, it was before 11:00 a.m. So I don't
25 remember the exact time that I went, but it was before

1 11:00 a.m.

2 Q. And I think you stated that the Amtrak and Greyhound
3 are quite close?

4 A. Yes. They're in the same station.

5 Q. You just went straight over to the Greyhound?

6 A. I'm sorry? I don't understand your question.

7 Q. From the Amtrak, you went straight over to the
8 Greyhound?

9 A. Yes, sir.

10 Q. Okay. And did you go through the lobby sitting area?

11 A. No, I did not. I believe I went straight from the
12 Amtrak, straight to the bus, because the bus was already
13 boarding.

14 Q. Okay. Just to save time; is that right?

15 MR. BRAUN: Objection; relevance.

16 THE COURT: If the witness can answer it, he can.
17 If not, let's move on.

18 A. The bus was already boarding, so I wished to speak with
19 the passengers as they were on the bus. That's the reason
20 I went straight to the bus.

21 Q. Okay. Let me see. When you got onto the bus, how many
22 passengers, approximately, were on the bus?

23 A. I don't recall. I know the whole -- the area in the
24 back, the passengers were already seated. I can't remember
25 exactly how many passengers were on the bus on that date.

1 Q. Do you know how many passengers a bus of that type can
2 carry?

3 A. It depends on the size of the bus. Anywhere from 51 to
4 55 passengers.

5 Q. And this bus was fairly full; is that right?

6 A. There were empty seats. I can't remember exactly how
7 many passengers on this date.

8 Q. Do you recall whether the bus was the same as almost
9 all the seats were occupied? Or do you recall?

10 A. I'm sorry? Can you repeat that?

11 Q. Do you recall whether the same as almost -- the bus was
12 mostly occupied or mostly unoccupied?

13 A. I don't remember the passengers, but the majority of
14 the seats had passengers in them.

15 Q. Okay. Would you say more than 75 percent of the seats?

16 A. I can't speculate on the amount.

17 Q. Okay. You don't recall?

18 A. No.

19 Q. Now, you said you were armed that day; is that correct?

20 A. Yes, sir.

21 Q. That's your habit?

22 A. Yes.

23 Q. What kind of firearm do you carry?

24 MR. BRAUN: Objection; relevance.

25 THE COURT: Why is that relevant here?

1 MR. KNOBLAUCH: I want to know what size it is.

2 THE COURT: Why is it relevant?

3 MR. KNOBLAUCH: Because if it's a large firearm,
4 then passengers see the large firearm, and that can, you
5 know, have definitely an effect on somebody's ability to
6 consent or not consent to search.

7 THE COURT: Overruled. I'll permit the question.

8 Q. (By Mr. Knoblauch) What kind of firearm were you
9 wearing?

10 A. I carry a Glock .27.

11 Q. How large is that?

12 A. Pardon?

13 Q. How large is that?

14 A. I don't know the dimensions.

15 Q. Okay. Would you classify it as being a large handgun?

16 A. No. I would actually say it's kind of small.

17 Q. Is it, say, smaller than a Colt Model 1911?

18 A. I'm not a gun person, so I don't know what a Colt Model
19 1911 is.

20 Q. All right. Thank you. Now, you've listened to the
21 wellness recording, haven't you?

22 A. Yes, sir, I have.

23 Q. And you listened to it before court today?

24 A. I've listened to it numerous times, yes.

25 Q. And, in general, with the exception of a few typos or

1 glitches or something like that, it seems to be fairly
2 accurate; is that correct?

3 A. What seems to be fairly accurate?

4 Q. Of what actually -- what actually occurred. Some of
5 the things you can't actually identify because it's
6 unintelligible; is that correct?

7 A. Some things you can't, no.

8 Q. Okay. Now, when you record these stops, record these
9 encounters, when do you start the recording?

10 A. Well, on a normal day, which this wasn't, I board the
11 bus, and prior to the first passenger coming on the bus, I
12 turn my recorder on, before I speak with the very first
13 passenger. On this date, I probably turned -- I think I
14 turned my recorder on prior to walking up the steps of the
15 bus because I knew there was already passengers on the bus.

16 Q. Okay. And when do you stop the recording?

17 A. It depends on what happens on the bus.

18 Q. Okay. What criteria do you use to determine whether or
19 not to stop the recording?

20 A. Well, if I complete checking the bus and we're finished
21 and no one is either arrested or we don't make a seizure, I
22 turn my recorder off. If there is an arrest or a seizure,
23 when the arrest is completed, I turn my recorder off.

24 Q. In this instance, you turned your recorder off when you
25 left the bus; is that correct?

1 A. In this case?

2 Q. Yes.

3 A. No. I was still on the bus when I turned my recorder
4 off.

5 Q. So you were still on the bus. And why did you turn it
6 off at that point?

7 A. As I stated earlier, as soon as the arrest is completed
8 and, generally, the handcuffs are on, that's when I turn
9 the recorder off.

10 Q. So nothing that occurred after you arrested Mr. Wellams
11 was recorded at all; is that right?

12 A. No, there was nothing recorded after the arrest was
13 completed.

14 Q. Now, on direct examination, I believe you testified
15 that you asked Mr. Wellams for his bus ticket; is that
16 correct?

17 A. Yes, I did.

18 Q. And then you asked him if he had any luggage; is that
19 correct?

20 A. Yes, I did.

21 Q. Okay. And then you asked him if you could examine his
22 pillow; is that correct?

23 A. I believe I asked to search it, yes, I did.

24 Q. And is it your testimony today that it happened in that
25 order?

1 A. I forget what order you even said the questions in.

2 Q. Okay.

3 A. So can you repeat them again?

4 Q. Okay. You said that you asked Mr. Wellams for his bus
5 ticket?

6 A. Yes.

7 Q. Then you asked him if he had any luggage; is that
8 correct?

9 A. I'm trying to recall what order I asked them in.

10 MR. BRAUN: Your Honor, I would object. The
11 recording speaks for itself.

12 THE COURT: It does speak for itself here,
13 counsel.

14 MR. KNOBLAUCH: Okay.

15 Q. (By Mr. Knoblauch) Now, you asked Mr. Wellams for his
16 pillow, and you asked the previous gentleman for his
17 pillow; is that correct?

18 A. I didn't ask them for their pillow. I asked them for
19 consent to search it for contraband.

20 Q. Now, you had seen these pillows before; is that right?

21 A. I have seen those pillows before, yes.

22 Q. Okay. They sell them in the bus stations; is that
23 right?

24 A. They actually do sell them at the Greyhound bus station
25 here in Albuquerque, yes.

1 Q. Now, Mr. Wellams never gave you permission to search
2 him, did he?

3 A. No, he did not.

4 Q. Okay. And when you -- when he indicated basically a
5 reluctance to being searched, you kept after him, didn't
6 you?

7 A. Well, first of all, your statement was "a reluctance."
8 I don't think there was a reluctance. He was questioning
9 about the search. He asked various questions. And your
10 statement or your question was "kept after him." I did ask
11 him more questions, yes.

12 Q. And when Mr. Wellams, referring to Page 12 of the
13 transcript, Line 18 --

14 MR. BRAUN: I would ask if the witness could be
15 provided with a copy of the transcript?

16 THE COURT: That's right.

17 MR. KNOBLAUCH: May I approach?

18 THE COURT: You may.

19 Q. (By Mr. Knoblauch) Okay. Mr. Wellams asked you, in
20 response to, I believe, your third or fourth time of asking
21 if you could search him, he said, "Is that necessary?" Is
22 that correct? That's Page 12, Line 18?

23 A. To answer your question, I don't recall asking him
24 three or four times to search him. And he did ask, "Is
25 that necessary?" I believe on two occasions that I

1 remember.

2 Q. And your response to him saying, "Is that necessary?"
3 was, "Okay. All right. Can you lift up your shirt?"

4 A. That was at the very end of the questioning, yes, I did
5 ask that.

6 Q. You don't recall three or four different times -- okay.
7 Going back to Page 10 --

8 MR. KNOBLAUCH: If I might approach?

9 Q. Okay. Now, Agent Perry, looking at Page 10 --
10 okay? And he asked you on Page 10, Lines 22 and 23,
11 "How about your person, sir? You don't have any weapons
12 or anything strapped to your person?" Right? Have you
13 got that?

14 A. Yes, I see that.

15 Q. Okay. And then on Page 11, we have Lines 3 and 4,
16 "Would you give me consent to search your person for
17 contraband?" Is that right?

18 A. Yes, I see that.

19 Q. And he did not give you permission there, did he?

20 A. No. He asked the question.

21 Q. And, in fact, in response to that, Pages 7 and 8, again
22 he asked, "Is it necessary?" Is that correct?

23 A. Yes, after he said, "I don't have a problem with that,
24 no." "Is it necessary?"

25 Q. And then Page 11, Lines 9 and 10, you ask, "I'm asking

1 for permission." Is that correct?

2 A. Yes, that's what it says.

3 Q. Okay. Is that correct? You asked him for permission
4 again; is that correct?

5 A. No. I don't think I'm asking. I'm clarifying. He's
6 asking me if it's necessary, and I didn't tell him, but
7 basically I was answering his question, that it wasn't
8 necessary. I'm asking him for permission to do it.

9 Q. So you were asking him for permission again?

10 A. No. I'm clarifying. I'm answering his question.

11 Q. Okay. So you're not asking the question again; you're
12 just clarifying. Okay. And, again, on Page 12, Lines 8
13 and 9, "Would you give me permission to conduct a search of
14 your person?" Is that correct?

15 A. Yes.

16 Q. Okay. That's three. Okay?

17 A. I don't -- I don't agree.

18 MR. BRAUN: I'm sorry. I would object to that
19 characterization. He is asked once, at Lines 3 and 4 of
20 Page 11. The defendant said, "I don't have a problem with
21 that," then asked questions.

22 At Lines 8 and 9, that Mr. Knoblauch just
23 referred to on Page 12, that's the second time he asked,
24 and it was only after Mr. -- after the defendant had asked
25 the questions.

1 THE COURT: The Court will have to reconcile all
2 of this. Let us proceed here, Mr. Knoblauch.

3 MR. KNOBLAUCH: Okay.

4 Q. (By Mr. Knoblauch) The bottom line is, Mr. Wellams
5 never gave you permission to search, did he?

6 A. He didn't come out and say "No" or "Yes." He didn't
7 give me permission, no.

8 Q. Now, let me see. You never saw Mr. Wellams before
9 meeting him on that bus, did you?

10 A. I'm sorry? I couldn't hear the question.

11 Q. You have never in your life seen Mr. Wellams before
12 meeting him on the bus on the 24th of May, have you?

13 A. If I have, I don't recall it.

14 Q. And you have no indication at all that Mr. Wellams
15 might be a dangerous person, do you?

16 A. I don't know anything about Mr. Wellams, other than the
17 fact of what happened on this date.

18 Q. Okay. And there is absolutely no indication Mr.
19 Wellams was carrying a weapon, was there?

20 A. When you say "no indication," I don't know who's
21 carrying a weapon or not. I have no idea.

22 Q. So it could have been anyone on that bus could have
23 been carrying a weapon; is that right?

24 A. That's correct.

25 Q. You saw nothing that Mr. Wellams in particular was

1 carrying a weapon, did you?

2 A. No. I didn't have any reason to believe that he had a
3 weapon with him.

4 Q. Okay. And you never told Mr. Wellams he was free to
5 refuse a search of his person, did you?

6 A. No, I did not.

7 Q. Although he kept asking you, didn't he?

8 A. I really don't understand your question.

9 Q. He asked you, "Is this necessary?" several times, did
10 he not?

11 A. I believe he asked that two -- two times, as I
12 remember.

13 Q. And you never told him it was not necessary, did you?

14 A. Well, I answered the question that he asked, that I was
15 asking permission. Basically, to me, that is answering the
16 question, that you don't have to -- you don't have to give
17 permission. It's not necessary. I'm asking you for
18 permission to do it.

19 Q. All right. "Yes" or "No"? You did not tell him it was
20 not necessary for him to give you permission, did you?

21 A. As I testified earlier, no, I did not.

22 Q. Okay. Thank you.

23 MR. KNOBLAUCH: Nothing further.

24 THE COURT: Any further need of the witness here,
25 Mr. Braun?

1 MR. BRAUN: Yes, Your Honor, if I could ask just
2 a few redirect questions?

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MR. BRAUN:

6 Q. Agent Perry, Mr. Knoblauch asked you about how full the
7 bus was, and you said you couldn't recall; is that right?

8 A. Yes, sir.

9 Q. You testified earlier, I believe, that passengers were
10 still boarding the bus when you began your consensual
11 encounters?

12 A. Yes, sir, that's correct.

13 Q. So had all the passengers been seated by the time you
14 got to the defendant?

15 A. No, they were not.

16 Q. Where was the defendant seated in relation to the front
17 or the back of the bus?

18 A. He was seated approximately seven to eight seats from
19 the rear of the bus, on the left-hand side, in the window
20 seat.

21 Q. And as you were engaging him in a consensual encounter,
22 were you looking around to see whether other people were
23 entering the bus or taking their seats?

24 A. No, I was not. I was concentrating on Mr. Wellams.

25 Q. Mr. Knoblauch asked you about when you stopped

1 recording the encounter. What is your purpose -- your
2 purpose -- in recording these encounters?

3 A. The reason that I record, and we started recording and
4 continue to record, is to show the consensual contact;
5 basically, the consensual person giving permission to speak
6 with him and the consensualness of the search. That's
7 basically the reason we record, to show that it's a
8 consensual encounter, it's a consensual search.

9 Q. For that purpose, once the arrest is made, there is no
10 need to record any further?

11 A. That's correct.

12 MR. BRAUN: Let me get a clean copy of the
13 transcript. May I approach the witness?

14 THE COURT: You may.

15 Q. Handing you the transcript, Exhibit 1-A, Mr. Knoblauch
16 asked about the order of the questions. On the transcript,
17 does it reflect whether you asked about the luggage before
18 you asked about the ticket?

19 A. Yes, it does.

20 Q. What does it reflect?

21 A. I asked him if he had any luggage with him on the bus;
22 then I asked him if he had his ticket with him.

23 Q. And did you hear that as you listened to the recording?

24 A. Yes, I did.

25 Q. Is that accurate?

1 A. Yes, it is.

2 Q. Okay.

3 MR. BRAUN: Nothing further. Thank you.

4 THE COURT: All right. Agent, let me ask you a
5 question.

6 MR. KNOBLAUCH: Your Honor, I would like one
7 question, follow-up.

8 THE COURT: All right. Go ahead.

9 RECROSS EXAMINATION

10 BY MR. KNOBLAUCH:

11 Q. Agent Perry, was there anything in the world to prevent
12 you from turning your recorder back on?

13 A. No. I can turn my recorder on or off whenever I
14 choose.

15 Q. So you could have -- after taking Mr. Wellams off the
16 bus and returning to the bus, you could have turned it back
17 on at that point?

18 A. Yes, I could have. Yes.

19 Q. Okay.

20 MR. KNOBLAUCH: Thank you.

21 THE COURT: Agent, specifically what was it about
22 this passenger that caused you to follow through the steps
23 and the questions that you did, as compared to other
24 passengers that you obviously encountered on the bus that
25 day?

1 THE WITNESS: Well, Your Honor, basically the
2 passenger that was seated across from him, Mr. Wellams, I
3 spoke with him more at length, and I asked them for their
4 tickets for a reason. The reason for that was both of them
5 told me they had no luggage with them. And the first
6 passenger was traveling from Phoenix to Memphis. He lived
7 in Memphis.

8 Specifically, just like with Mr. Wellams, he
9 lived in Michigan, was traveling to Memphis, and had been
10 in Arizona. That's three different states. He had no
11 luggage with him at all. To me, that's odd from what a
12 normal passenger travels with. I speak with passengers,
13 numerous passengers, hundreds of passengers daily on
14 different buses and on the train, and the majority of
15 passengers that are normal travelers have some type of
16 luggage with them, either checked in or carried on.

17 Mr. Wellams had no type of luggage, so that's the
18 reason that I went and asked him for his ticket and then
19 asked him more questions. Plus, his dress. He had a
20 loose-fitting shirt on that was untucked, that covered up
21 his whole -- basically, from his knees to his upper body.
22 That's the reason that I subsequently asked him for consent
23 to lift up his shirt.

24 Also, Your Honor -- if I may continue with my
25 answer?

1 THE COURT: Go ahead.

2 THE WITNESS: When speaking with Mr. Wellams,
3 every question that I asked him from the beginning, as far
4 as where he was traveling to, if the pillow belonged to
5 him, for his ticket, he didn't question anything. And when
6 I got to the point about his person, searching his person,
7 that's when he started asking questions. Did that raise my
8 suspicion a little bit? Yes.

9 THE COURT: Why would it? Wouldn't that be a
10 natural response?

11 THE WITNESS: From my experience, no, ma'am, not
12 from passengers on the bus. I conduct -- well, the
13 passenger that was seated just directly across from him, as
14 you heard on the tape, I'm not saying every person gives
15 permission to search their person.

16 Some people do question it, but that's not a
17 normal response from a normal passenger that I speak with
18 on the bus.

19 THE COURT: All right. In light of the Court's
20 questions, are there any other questions here?

21 MR. BRAUN: Not from the government.

22 THE COURT: Mr. Knoblauch?

23 MR. KNOBLAUCH: No, Your Honor.

24 THE COURT: Okay. Just give me a moment here.
25 All right. Sir, I do excuse you at this time.

1 THE WITNESS: Thank you.

2 THE COURT: Did the parties want the copy that
3 was provided to the Court to be the original, as far as the
4 exhibits are concerned?

5 MR. BRAUN: Yes, Your Honor, that would be fine.

6 THE COURT: All right. Any other witnesses?

7 MR. BRAUN: None from the government.

8 THE COURT: All right. Counsel?

9 MR. KNOBLAUCH: Not for the defendant, Your
10 Honor.

11 THE COURT: All right. Is there any other
12 evidence that is going to be presented here? First of all,
13 Mr. Knoblauch? This is your motion.

14 MR. KNOBLAUCH: I have no evidence at this point,
15 Your Honor.

16 THE COURT: Okay. Mr. Braun?

17 MR. BRAUN: No, Your Honor.

18 THE COURT: All right. Let's have some argument
19 on this, and I'm going to invite, of course, the movant --
20 I want you to take me step-by-step and inform me of the
21 basis, specifically based on the facts, the evidence that
22 we're heard, that would cause you to seek the relief that
23 you have pled here.

24 MR. KNOBLAUCH: Your Honor, I think this is
25 patently a Fourth Amendment violation.

1 Agent Perry went on the bus, doing his job, and
2 he's going through the passengers. And when he gets to the
3 defendant, the defendant displays marked reluctance to a
4 body search. Agent Perry has candidly said that he did not
5 get permission to search.

6 Your Honor, lifting up the shirt -- lifting up
7 the shirt is a search. Your Honor, this does not fall
8 within the parameters of a Terry stop or anything else.
9 There has been absolutely no indication of any kind of
10 danger, any kind of weapon involved, or anything else.

11 Agent Perry is just searching Mr. Wellams because
12 he suspects that Mr. Wellams has something. However, he
13 does not have any probable cause. He does not have a
14 warrant. He has nothing.

15 THE COURT: Well, he has got a concern that
16 here's someone traveling a great distance, who doesn't have
17 luggage.

18 MR. KNOBLAUCH: Many people travel great
19 distances without luggage. There is actually no
20 requirement that people carry luggage with them when they
21 travel. Fortunately, we have not come that far in this
22 country that we have to require people to carry that sort
23 of thing, or we'd be struggling legitimately.

24 What we have is a citizen of the United States
25 traveling with public transportation and being accosted by

1 an officer of the law; and the officer of the law, rather
2 than backing down when he should have backed down, kept
3 boring in, when the defendant kept asking, "Do I have to do
4 this? Do I have to do this?"

5 And the agent is evading the question and just
6 saying, "Do this. Do this. Lift up your shirt."

7 I would submit to the Court, Your Honor, that
8 this is a search that is done as an order by this
9 officer.

10 The couching of it is, "Can you lift up your
11 shirt?" Your Honor, that is not a request. That's an
12 order. Under these circumstances, crowded bus, it's
13 unquestionably an order from the officer. At that point,
14 there is no consensual search.

15 THE COURT: Go ahead.

16 MR. KNOBLAUCH: As a consequence, everything
17 flowing from that search must be suppressed. The arrest,
18 anything that is discovered as from escorting Mr. Wellams
19 off the bus, everything from that point on is a fruit of
20 the poisonous tree, and it must all be suppressed. I think
21 it is quite clear.

22 And I would ask the Court to let us submit
23 memorandums to that effect.

24 THE COURT: All right. Let me hear from you, Mr.
25 Braun.

1 MR. BRAUN: Well, first of all, Your Honor, I
2 think it's clear that Agent Perry is fully entitled to
3 engage in consensual encounters with passengers on the bus,
4 and I don't think the defendant is disputing that. And it
5 doesn't sound like the defendant is disputing that this
6 particular encounter began as a consensual encounter; that
7 when Agent Perry first approached him and said, "I'm a
8 police officer, may I speak with you for a moment?" the
9 defendant responded, as Agent Perry testified, by nodding
10 and quietly saying, "Yeah."

11 And then Agent Perry asked the question, "Where
12 are you coming from? Where are you going to? Where do you
13 live?" Those types of questions.

14 And, again, this was a conversational tone.
15 There was nothing intimidating about what Agent Perry was
16 doing. He did not have his gun drawn. It wasn't even
17 visible. He was dressed in plainclothes. And there were
18 many other people on the bus. So it's not a coercive
19 atmosphere, where it's just Agent Perry with the defendant
20 and just the two of them in a room. They're surrounded by
21 people. It's not a coercive environment whatsoever.

22 Now, while the questioning of the defendant may
23 have raised Agent Perry's suspicions, he didn't do anything
24 with those suspicions, such as detaining the defendant
25 based on reasonable suspicion or anything like that. It

1 just caused him to continue the encounter in a perfectly
2 lawful way. He continued the consensual encounter.

3 Now, the Court can hear on the recording the
4 consensual encounters that occurred before this and how
5 quick they were because there was nothing that raised Agent
6 Perry's suspicion. And so he would ask them a few
7 questions, then move on to the next person. When he got to
8 the defendant, there were suspicions based on the lack of
9 luggage.

10 THE COURT: Is that enough?

11 MR. BRAUN: It's enough for him to continue the
12 encounter. There's nothing unlawful at that point. He's
13 continuing a consensual encounter. The defendant certainly
14 hasn't terminated the encounter, hasn't indicated any
15 desire to leave. Agent Perry testified that he didn't say,
16 "I don't want to speak to you anymore." It continued to be
17 a consensual encounter.

18 At that point, Agent Perry asked if he could
19 search the defendant's person. The defendant never gave a
20 clear answer.

21 Mr. Knoblauch wants to say that Agent Perry
22 hounded him or bored in on him, but he didn't do that. As
23 is clear from listening to the recording and reading the
24 transcript, all Agent Perry was doing was attempting to
25 answer the defendant's questions. And every time Agent

1 Perry would ask a question, the defendant would answer with
2 a question.

3 If we start at Page 10 of the transcript, at
4 Lines 23 and 24, I guess 22 through 24:

5 "How about on your person, sir? You don't have
6 any weapons or anything strapped to your person?"

7 Mr. Wellams' question: "On my person?"

8 Agent Perry: "Yeah, on your body?"

9 Answer: "No, sir."

10 "Okay. Would you give me consent to search your
11 person for contraband?"

12 Mr. Wellams answers the question with a question:
13 "You want to search my person?"

14 "Yes."

15 Mr. Wellams: "I don't have a problem with that,
16 no."

17 So he's saying he doesn't have a problem with
18 that. That is, in effect, giving consent at that point.

19 But then he asks: "Is that necessary?"

20 And so Agent Perry has to answer that: "Well,
21 sir, it's not. I'm asking you for permission."

22 So in response to Mr. Knoblauch's question about
23 whether Agent Perry ever said it wasn't necessary, Agent
24 Perry did say: "It's not necessary. I'm asking for your
25 permission."

1 There's nothing whatsoever coercive about this.
2 The defendant has already said he doesn't have a problem
3 with it. What he's asking is if it's necessary. Agent
4 Perry is saying, "No, it's not necessary. I'm asking for
5 your permission." Then the defendant says that he doesn't
6 understand, "you're throwing me off," and so Agent Perry
7 then goes on to just explain why he's there, why he's doing
8 this.

9 Again, nothing coercive. He's not trying to
10 intimidate the defendant. He's trying to explain why he's
11 there, why he's doing what he's doing, in response to a
12 specific question from the defendant. And, again, this is
13 after the defendant has said that he doesn't have a problem
14 with the search of his person.

15 So then the defendant asked at Lines 10 and 11 of
16 Page 12, after Agent Perry has explained to him why he's
17 there, why he's doing this, Mr. Wellams asks, "We need to
18 leave out of here?"

19 Agent Perry doesn't hear him. He asked it again,
20 and Agent Perry says, "No."

21 And I think that's a typo there.

22 THE COURT: Yes.

23 MR. BRAUN: It should be "Male Officer."

24 Agent Perry says, "No, we don't need to go
25 anywhere, sir, unless you want to go somewhere. It's up to

1 you," again making it very clear. Mr. Wellams is not
2 detained. This is not coercive. It's purely voluntary.

3 And so at that point, Mr. Wellams again asks, "Is
4 that necessary?"

5 And so at that point, Agent Perry -- okay. He is
6 clearly not getting anywhere with asking to search the
7 person, so he asks, "Will you lift up your shirt?"

8 Again, as Agent Perry testified, he's asking for
9 the defendant to voluntarily lift up his shirt. It's not a
10 command. And in response, as a nonverbal consent, the
11 defendant responds by lifting up his shirt.

12 At that point, when he voluntarily lifts up his
13 shirt in response to a question, Agent Perry sees the
14 bundle. And from his years of doing interdiction work,
15 from over 1,000 drug seizures, hundreds of seizures of
16 contraband when it's wrapped, taped to a person's body, he
17 knows what he's looking at. And he knows, at that point,
18 that's illegal drugs.

19 And so he has probable cause to arrest the
20 defendant at that point. And so, at the very least, he has
21 Terry reasonable suspicion to pat the defendant down to
22 either confirm or dispel his suspicions.

23 THE COURT: The Court understands that. I think
24 the focus is really on the time span that began from the
25 first words the agent stated to this passenger, to the

1 point that the shirt was raised and the bundle was noticed.
2 That's really the focus.

3 MR. BRAUN: Okay. So if probable cause isn't the
4 question, then really what --

5 THE COURT: For me, after hearing the evidence, I
6 think that is the focus at this point, because that is
7 going to determine, obviously, the consequences of what was
8 later discovered and what was done.

9 MR. BRAUN: Right. And our position is, from
10 listening to the audio, from reading the transcript, it's
11 very clear that this is a noncoercive consensual encounter,
12 where the defendant has made it clear he doesn't have a
13 problem with a body search, but then asks, "Is it
14 necessary?" and then asks several questions that Agent
15 Perry is trying to answer in a noncoercive way.

16 And finally, after this back-and-forth questions
17 and answers, Agent Perry simply asks, "Will you lift up
18 your shirt?" And in response, the defendant does so.

19 He's not responding to a command. He's
20 responding to a request for him to voluntarily do so. And
21 of course by voluntarily lifting up his shirt, there was no
22 Fourth Amendment violation whatsoever.

23 THE COURT: Mr. Knoblauch, do you agree that the
24 typo should be corrected here on Page 12, Line 15? It
25 should actually read "Male Officer," as opposed to

1 "Mr. Wellams?"

2 MR. KNOBLAUCH: Your Honor, I agree that is a
3 typo.

4 THE COURT: Yes. The record will reflect that.
5 Do you want to respond any further here, Mr. Knoblauch?

6 MR. KNOBLAUCH: Just quickly, Your Honor. As
7 Agent Perry testified, Mr. Wellams did not give him
8 permission to search him. I have absolutely no reason to
9 doubt that at all. Agent Perry was there. Agent Perry has
10 not only what the Court has, which is the recording, but
11 Agent Perry saw what was going on, and he says he did not
12 have permission to search Mr. Wellams. We can take that as
13 a given.

14 Your Honor, any consent to search under these
15 circumstances must be clear and unequivocal. Under any
16 interpretation of what's going on here, we do not have a
17 clear and unequivocal permission to search. We do not have
18 any sort of exigent circumstances. We just have a search.

19 Thank you.

20 THE COURT: All right. I'm not sure that the
21 Court really needs any further argument on this, but if you
22 want to submit something within seven days, seven calendar
23 days, I'll permit that opportunity.

24 Did you want that, Mr. Knoblauch? I think you
25 referenced it earlier?

1 MR. KNOBLAUCH: Yes, Your Honor.

2 THE COURT: All right. No more than ten pages.

3 MR. KNOBLAUCH: Okay.

4 THE COURT: And simultaneously. There will be no
5 responses, no replies.

6 MR. BRAUN: Yes, Your Honor.

7 THE COURT: Within seven calendar days of today.
8 Again, no replies, no responses, simultaneous. And the
9 Court will take the matter under advisement.

10 MR. BRAUN: And, Your Honor, it will probably be
11 Ms. Henderson who will do the briefing. I'm not sure how
12 long it will take to get an expedited order of the
13 transcript, but perhaps --

14 THE COURT: Let me clarify something. Is there
15 anything else we need to bring up on the record?

16 MR. KNOBLAUCH: I don't think that we need to.

17 THE COURT: Okay. We're going to stand in recess
18 at this time as to this matter.

19 THE COURT: Let me have counsel approach. We're
20 not on the record, Julie.

21 (A discussion was held at the bench, off the
22 record.)

23 THE COURT: Back on the record here for just a
24 minute, Julie. I'm going to extend that time for
25 submitting any written argument to ten days, with the

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1 understanding that should one party or the other request
2 an extension due to hardship here with, obviously, the
3 assigned Assistant U.S. Attorney due to severe illness of a
4 close family member, that the Court will reasonably extend
5 that deadline. And I think Mr. Knoblauch agrees with that,
6 as well.

7 MR. KNOBLAUCH: Yes.

8 THE COURT: Yes, under the circumstances. So
9 just let the record reflect that. And I think that the
10 parties may be ordering a transcript, as well, and that
11 preparation time may figure into that as well. All right.

12 We are now off the record again. Thank you,
13 counsel, for your arguments, your appearances. Counsel,
14 nice to meet you this afternoon.

15 MS. RUIZ-VELEZ: Nice to meet you.

16 THE COURT: All right. We'll stand in recess as
17 to this matter. Thank you.

18 (Proceedings concluded at 3:47 p.m.)
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REPORTER'S CERTIFICATE

I, Julie Goehl, RDR, RPR, RMR, CRR, CCR #95,
Official Court Reporter for the United States of
America, do hereby certify that I did report in
stenographic shorthand the proceedings set forth
herein, and that the foregoing constitutes a true and
correct transcription of the proceedings.

In testimony whereof, I have hereunto set my hand on
this 4th day of October, 2012.

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